



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,370	05/17/2002	Charles Andrew Collyer	229752001500	1330

25226 7590 11/30/2005  
MORRISON & FOERSTER LLP  
755 PAGE MILL RD  
PALO ALTO, CA 94304-1018

EXAMINER
----------

MONDESI, ROBERT B

ART UNIT	PAPER NUMBER
----------	--------------

1653

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.		Applicant(s)	
	09/980,370		COLLYER ET AL.	
	Examiner		Art Unit	
	Robert B. Mondesi		1653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 05 October 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 12-17 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 18-19 and 21-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

This Office action is in response to the amendment filed October 5, 2005. **Claims 1-11, 18-19 and 21-25** are presently pending and under examination.

### ***Restriction requirement***

This application contains **claims 12-17 and 20** drawn to an invention nonelected with traverse in Restriction requirement mailed February 7, 2003. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Withdrawal of Objections and Rejections***

The objections and rejections not explicitly restated below are withdrawn.

### ***Maintenance of rejections***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 112***

**Claims 9-11 and 23-25** remain rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

***Claim Rejections - 35 USC § 103***

**Claims 1-11, 18-19 and 21-25** remain rejected under 35 U.S.C. 103(a) as being unpatentable over Potempa et al. in view of Progulske-Fox and Nakayama et al.

The above rejections were explained in the Office action.

***Response to applicants' arguments***

In regards to the rejection of **Claims 9-11 and 23-25** under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement, applicants assert that the term "prophylaxis" has been deleted from claim 1 and therefore this ground of rejection of claims 1-11 and 18-19 is moot.

Applicants' arguments have not been found persuasive. **Claims 9-11 (new claims 23-25** depended therefrom) still contain the term prophylaxis.

In regards to the rejection of **claims 1-11, 18-19 and 21-25** under 35 U.S.C. 103(a) as being unpatentable over Potempa et al. in view of Progulske-Fox and Nakayama et al., applicants assert that while the references highlight the role of the hemagglutinin peptide in pathogenesis, none of these citations specifically reveal the actual mechanism of interaction between hemagglutinin protein and a molecule such as heme nort (sic) teach or suggest a method based on inhibition of such interaction. Applicants urge further that the claimed invention specifically targets the antagonist to disrupt a specific interaction between HA-2 and the hemagglutinin motif on a porphyrin molecule.

Applicants' arguments have not been found persuasive. Firstly, it is noted that the features upon which applicant relies (i.e., interaction between HA-2 and the

Art Unit: 1653

hemagglutinin motif) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Secondly, Claims 1-8 and 10 are broad claims that teach a method of treatment of an infection by an organism such as *P.gingivalis* or a related organism in a biological environment, wherein the biological environment is a mammal comprising the administering of an agent that has the ability to disrupt an interaction, which in effect leads to the end point of treatment of an unspecified disease. Even though the mentioned references do not teach antagonizing of the specific interaction between HA-2 and an HA2-binding motif on a prophyrin, they clearly suggest the administering of an agent such as a hemagglutinin peptide component in order to treat infections and to provide immunological protection against biological disease, see Potempa et al. on page 3, lines 20-35; page 4, lines 10-13 and Progluske-Fox on page 41, lines 24-29.

Furthermore it must be noted that the applicants have not provided any information or arguments in regards to unexpected results. Applicants' arguments would be stronger if the claims were amended in order to include unexpected results commensurate within the scope of the invention.

### **Conclusion**

No claims are allowed

Applicants' amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 1653

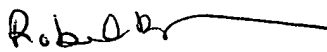
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

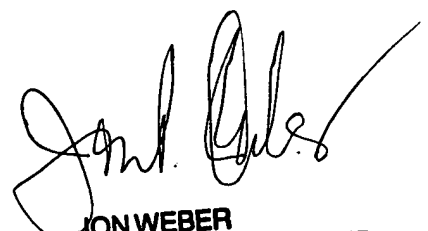
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B Mondesi whose telephone number is 571-272-0956. The examiner can normally be reached on 9am-5pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber can be reached on 571-272-0925. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert B. Mondesi  
Patent Examiner  
Group 1653

  
11-28-05

  
JON WEBER  
SUPERVISORY PATENT EXAMINER